

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2304 of 1980

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BULCHAND THAKURDAS SINCE DECEASED BY HIS HEIRS & L.R.

Versus

STATE OF GUJARAT

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Appearance:

MR SB VAKIL for Petitioners

MR HL JANI Asstt. GP for the Respondents.

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 19/22-12-1997.

ORAL JUDGEMENT

Heard Mr.Aspi Kapadia for the petitioners and Mr. Jani, the learned Assistant Government Pleader for the respondents.

2. It appears that the petitioners herein had encroached upon the government lands situated in Railwappura being city survey No. 575 some time in the year 1959-60. Said pieces of lands admeasuring 100

sq.yards and 281 sq. yards were leased to the petitioners for a short term on the terms and conditions mentioned in the order. Such lease was renewed from time to time. IN the year 1965, the Town Planning Scheme was finalized and the lands in question were reserved for the police station and the quarters for the police officers. The petitioners, therefore, in the year 1973, made an application for allotment of alternate piece of land. Said applications were accepted by the Government and under order dated 22nd April, 1976, the petitioners were allotted a piece of land bearing survey No. 303A of Railwaypura Ward admeasuring 114 square yards. Out of the aforesaid 114 square yards of lands, 40 sq. yards of land was allotted to the petitioner No. 1 and 74 sq. yards of land to the petitioner No. 2. Said grant was made at the market rate and on condition, inter alia, that the petitioners shall first hand over the possession of the land bearing city survey No. 575 and 575 paiki then under their occupation. In view of the said grant, both the petitioners gave an undertaking to the Government on 22nd May, 1977. Copies of the undertaking are annexed to the affidavit in reply to the petition(at pages 84 and 86). Both the petitioners agreed to hand over the possession of the land bearing survey No. 575 and 575 paiki in their occupation without raising any dispute.

3. The petitioners were liable to pay the rent for the land in their occupation as determined by the Government from time to time. However, it appears that the petitioners were in arrears of rent for a long time. Notices in this respect were issued by the Government for recovery of the arrears of rent and education cess. However, the petitioners failed to pay the arrears of rent. Eventually, on 24th July, 1980, the petitioners were called upon to remit a sum of Rs.18,612.20 ps. being the arrears of rent failing which coercive measure would be taken against the petitioners. A reminder was also sent on 4th August, 1980. Feeling aggrieved, the petitioners have preferred this petition.

4. By an interim order made on 21st October, 1980, this Court granted interim relief in terms of paragraph 7(c) of the petition on condition that the petitioners pay to the second respondent arrears of rent and continue to pay regularly the rent as and when it falls due at the rate of Rs. 3.50 ps. per square yard plus local funds. In view of the said interim relief, I am informed, the petitioners have paid the rent at the rate of Rs.3.50 ps. per sq. yard. However, possession of the said land has not yet been handed over to the State Government. It

would not be out of place to note here that the petitioners have been handed over possession of the pieces of land of survey No. 303A in accordance with the terms of grant made on 22nd April, 1976. The petitioners have also paid up the price of the said land.

5. In my view, upon handing over of the possession of the lands bearing Survey No. 303A, both the petitioners were liable to hand over the possession of the land bearing Survey No. 575 and 575 paiki to the Government. The petitioners are, therefore, in default. However, the petitioners are duty bound to pay the rent/occupancy charge to the Government for their occupation of lands bearing survey No. 575 and 575 paiki as determined by the Government from time to time. In the event the petitioners fail to pay the rent or the occupancy charge as aforesaid, the Government is duty bound to recover the same in accordance with law. In exercise of its power to recover the amount of arrears of rent or the occupancy charge, if the Government takes any coercive measure under the provisions contained in the Bombay Land Revenue Code, same would not call for interference. I, therefore, do not find any infirmity in the impugned notices.

22.12.1997.

Mr. Kapadia has submitted that the respondents have calculated the amount of arrears of rent wrongly and the fact is admitted by the Additional City Survey Superintendent in his affidavit made in reply to the petition. He has submitted that the petitioners could not have submitted to the demand for arrears of rent which was not due and payable by the petitioners. The impugned notices for recovery of an excessive amount of arrears of rent should, therefore, be quashed and set aside. Mr. Jani, however, has submitted that, in view of the passage of time, it would not be conducive to the interest of administration to enforce the impugned notices more than 17 years after the date of issuance. The respondents, therefore, shall not enforce the notices impugned herein. He has submitted that, if need be, fresh notices for recovery of the arrears of rent will be issued upon the petitioners and will be pursued in accordance with law. In view of this statement made by Mr. Jani, the cause of action does not survive.

Petition is, therefore, dismissed. Rule is discharged. The petitioners shall bear costs of this petition. The cost is quantified at Rs. 5,000/(Rs.five thousand only) i.e. each of the petitioners shall pay a sum of Rs. 2,500/(Rs.two thousand five hundred only) to respondent No. 2 herein by way of costs. Respondent No.

1 and 3 shall bear their own costs.

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Vyas